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below the fill level so that the device engages clumps in the litter and moves such clumps toward the discharge position, and wherein said device is positioned above the fill level in said storage position.

47. The litter box of claim 46 wherein said device includes tines arranged to move through the cat litter in said litter chamber, said tines being located above the fill level when said device is in said storage position.

48. The litter box of claim 47 further comprising a track extension for removing said tines from the cat litter as said device moves toward said storage position.

REMARKS

Applicant's undersigned representative wishes to thank Primary Examiner Manahan for the courteous and helpful interview conducted on December 3, 1998.

A petition for an extension of time is being filed concurrently herewith.

New claims 38-48 have been added. The new claims are underlined per M.P.E.P. § 1453. Support for the new claims appears in the reissue specification, including column 3, lines 9-12, column 4, lines 60-62, column 7, lines 22-27 and 49-54, and column 8, lines 56-65.

The reissue application now contains claims 1-48 -- 11 independent claims in excess of the number of independent claims in the original patent and 26 total claims in excess of the total number of claims in the original patent. Applicant previously paid for the presentation of 10 excess independent claims and 15 excess total claims. Our check in the amount of \$276.00 for the new claims is attached. See M.P.E.P. § 1415.

Please charge any deficiency in the fees associated with this paper to our Deposit Account No. 04-1073.

A Supplemental Declaration (37 C.F.R. § 1.175(b)(1)) will be filed when the application is otherwise allowable, as discussed during the interview.

The allowance of claims 1-25 and 28-32 is gratefully acknowledged.

Claims 26, 34 and 35 are rejected under 35 U.S.C. § 103 as being unpatentable over Carlisi in view of Hohenstein. Reconsideration is respectfully requested. Carlisi discloses a system for removing solid waste 12 from a litter box 10. In the Carlisi system, a rake 44 moves through the litter material 14 to discharge waste 12 into a receptacle 30. As acknowledged in the Office Action, the Carlisi system does not have a waste level sensor.

Hohenstein discloses a litter system with a litter chamber 14 and a waste container 90. The litter chamber 14 is filled with nonabsorbent material (col. 2, line 59). The waste container 90 is filled with baking soda 170 (col. 4, lines 29-31). The waste container 90 is located within a housing 12. Solid waste is moved by a rake 42 through an opening 18, and from there into the container 90. Liquid waste flows through the nonabsorbent material and into the container 90 through a drain 146. The waste container 90 is rotated to mix the waste into the baking soda 170 (col. 6, lines 24-26). A sensor 124 determines when the container 90 "becomes sufficiently heavy to indicate a full condition" (col. 3, line 63 to col. 4, line 2). "An indicator, such as lamp 123, visible from outside the system, indicates when the container [90] is full." (Col. 4, lines 5-7.)

The position taken in the Office Action is that it would have been obvious to provide the Carlisi litter box 10 with a weight sensor 124, 123 of the type taught by Hohenstein "in order to make the pet owner aware that the waste receptacle [30] needs to be emptied." Reconsideration is respectfully requested. Hohenstein uses a weight sensor 124, 123 for reasons that would not have been considered applicable to the Carlisi system:

The interior of the Hohenstein container 90 is not readily accessible from outside. Since the container 90 is rotated during use, it has a tubular construction; it is enclosed on all sides. It would be difficult to look into the container 90. That is presumably why Hohenstein uses a sensor 124 with an indicator lamp 123. But it would not be difficult to look into the Carlisi waste receptacle 30. The reason Hohenstein uses a weight sensor -- because there is no other convenient way to determine whether the container 90 is full -- does not apply to the Carlisi system.

Hohenstein does not broadly teach the desirability of providing a weight sensor 123, 124 for any and all waste receptacles. Rather, Hohenstein teaches the desirability of using a sensor 123, 124 for a receptacle that is otherwise not accessible to the human operator. Without the benefit of Applicant's disclosure, the applicability of Hohenstein's sensor 123, 124 to the Carlisi system, where the waste receptacle 30 is readily accessible, would not have been apparent. The prior art does not provide adequate motivation to modify Carlisi in view of Hohenstein in the manner proposed in the Office Action. Only with the hindsight benefit of Applicant's disclosure is it recognized that a sensor might be helpful in a system of the type shown by Carlisi. Consequently, the rejection of claims 26, 34 and 35 should be withdrawn.

Claims 27 and 33 are rejected under § 103 as being unpatentable over Carlisi in view of Strickland. Reconsideration is respectfully requested. Strickland discloses a cat waste disposal system which provides a measured amount of litter on a conveyor belt 14. A hopper 12 actuated by a timer 54 or a pressure sensor 56 dispenses a measured amount of litter onto the belt 14. The hopper 12 has a container 30 for holding a predetermined amount of litter. A motor 76 rotates the belt 14 to cause old litter to drop into a chute 86. A manual actuating means 55 is provided in the timer 54 to open and close the container 30 and move the belt 14 as desired by the operator (col. 3, lines 20-23).

The systems taught by Strickland and Carlisi are not analogous to each other. In the Strickland system, the supply of new litter onto the belt 14 is synchronized with the disposal of old litter into the chute 86. The Strickland system has no means for cleaning the belt 14 independent of the supply of new litter from the hopper 12. In contrast, in the Carlisi system, there is no connection between the supply of new litter to the litter compartment 28 and the removal of old litter therefrom.

There is no need suggested by the references for automatically supplying fresh litter into the Carlisi system. Consequently, the automatic supply means taught by Strickland would not have been considered applicable to the Carlisi system. The prior art does not provide adequate motivation to modify Carlisi in view of Strickland in the manner proposed in the Office Action. For at least these reasons, the rejection of claims 27 and 33 should be withdrawn.

Moreover, claim 33 recites a "mode selector switch, the switch being moveable between a manual operation position . . . and an automatic operation position." Carlisi and Strickland,

even when considered in combination, fail to disclose or suggest the switch of claim 33, which is moveable between manual and automatic positions. This is an additional reason why claim 33 should be allowable over Carlisi and Strickland.

Claims 36 and 37 are rejected under § 103 as being unpatentable over Arbogast in view of Carlisi. Reconsideration is respectfully requested. Arbogast discloses a system for cleaning a litter box. In the Arbogast system, a basket 7, 8 is rotated through litter material 4 to collect cat waste 5 (Figs. 8 and 9). The basket 7, 8 is then rotated through 360° to deposit the waste 5 into a storage container 6 (Figs. 10-12). The basket is formed of a sifting screen 7 and a seal 8 (col. 4, lines 16+).

The position taken in the Office Action is that it would have been obvious to use the comb 54 taught by Carlisi "instead of the basket" taught by Arbogast. However, if the Carlisi comb 54 were used in the Arbogast system instead of the basket 7, 8, the cat waste 5 would not be carried upwardly in the positions shown in Arbogast's Figs. 10 and 11. It would not have made sense to modify the basket 7, 8 taught by Arbogast in view of the comb 54 taught by Carlisi in the manner suggested in the Office Action. Consequently, the rejection of claims 36 and 37 should be withdrawn.

Claims 36 and 37 are further rejected under § 103 as being unpatentable over Carlisi. Reconsideration is respectfully requested. Claims 36 and 37 each recite a comb that is "positioned above the [cat litter] fill level in the storage position." The storage position is an important feature of the claimed invention. As acknowledged by the Office Action, Carlisi fails to disclose or suggest the recited storage position. Consequently, claims 36 and 37 should be allowable over Carlisi. "To establish prima facie obviousness of a claimed invention, all

the claim limitations must be taught or suggested by the prior art." M.P.E.P. § 2143.03.

Moreover, as discussed during the interview, there are important advantages associated with providing an elevated comb storage position. In the preferred embodiment, a comb 43 is suspended from hangers 42 that are journaled on a shaft 41 (column 3, lines 4+). Consequently, providing an elevated storage position ensures that the tines 44 of the comb 43 are pointed downward to be pushed into the litter 38 at the start of the comb carriage movement (column 5, lines 47+). In addition, providing an elevated storage position provides improved access to the litter box housing 21 (Fig. 1), and there are additional advantages associated with the claimed invention.

New claims 38-40, 44 and 45 should be allowable along with claims 26 and 35 and for other reasons. Among other things, the claims recite a "source of radiation." Carlisi and Hohenstein fail to disclose or suggest the recited source of radiation.

New claims 41 and 42 should be allowable along with claim 27. In addition, claims 41 and 42 recite a "sensor system for determining whether a cat is in the litter box." Carlisi and Strickland fail to disclose or suggest the sensor system of claims 41 and 42.

New claim 43 should be allowable along with claim 33. In addition, claim 43 recites that "said comb drive is operated on a cyclical basis when said mode selector switch is in said manual operation position." Carlisi and Strickland fail to disclose or suggest the cyclical feature of claim 43.

New claim 46 is broader in certain respects than claims 36 and 37. According to claim 46, a "device for engaging

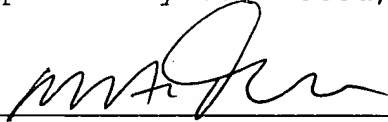
clumps" is "positioned above the fill level in [a] storage position." Arbogast and Carlisi fail to disclose or suggest the storage position of claim 46 in combination with the other features of claim 46. Claims 47 and 48 depend from claim 46 and recite additional important limitations.

Allowance of the application with claims 1-48 is solicited.

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Respectfully submitted,

By



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